

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KARL VAN SCOTT,)	
)	
Plaintiff,)	Case No. 1:09-cv-134-SJM-SPB
)	
v.)	
)	
JOSH CHERISH, <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM JUDGMENT ORDER

Plaintiff's civil rights complaint was received by the Clerk of Court on June 10, 2009 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on July 14, 2011 [49], recommends that Defendants' motion for summary judgment [33] be granted in part and denied in part. The parties were allowed fourteen (14) days from the date of service in which to file objections. Service was made on Defendants electronically and on Plaintiff by certified mail at his address of record. To date, no objections to the Report and Recommendation have been filed. Accordingly, after de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 4th Day of August, 2011;

IT IS ORDERED that the Defendants' motion for summary judgment [33] shall be, and hereby is, GRANTED in part and DENIED in part, as follows:

1. Said motion is GRANTED insofar as it relates to Plaintiff's Eighth Amendment claim premised on the Defendants' alleged indifference to his health and safety; and
2. Said motion is DENIED insofar as it requests that Defendants Ostrowsky, Buchanan, McKenzie, Sabousky, Ruditis, Lyles, Smith, and Campbell be dismissed from this action due to their lack of personal involvement in the alleged violation of Plaintiff's Fourteenth Amendment right to medical privacy; and
3. Said motion is GRANTED with respect to Plaintiff's claim for compensatory damages; and
4. Said motion is GRANTED with respect to Plaintiff's claim for punitive damages against the Defendants in their official capacities; and
5. Said motion is GRANTED with respect to Plaintiff's claim for declaratory and injunctive relief inasmuch as those claims are moot; and
6. Said motion is DENIED insofar as it otherwise relates to Plaintiff's Fourteenth Amendment right-to-medical privacy-claim.

IT IS FURTHER ORDERED that, on or before August 24, 2011, Plaintiff shall file an amended complaint, consistent with the terms of this Memorandum Order and Magistrate Judge Baxter's July 14, 2011 Report and Recommendation. The amended complaint shall identify: (i) the supervisory Defendants whom Plaintiff claims had knowledge of Defendant Taylor's alleged disclosure of Plaintiff's medical condition to other inmates, and (ii) the basis upon which each such supervisory Defendant is alleged to have been personally involved in the alleged misconduct. Failure to file an amended complaint on or before August 24, 2011 will be construed by this Court as an indication that Plaintiff no longer wishes to pursue his claims against the supervisory Defendants.

In accordance with the foregoing, JUDGMENT is hereby entered in favor of the Defendants, and against Plaintiff, with respect to Plaintiff's claim under 42 U.S.C. §1983

that his federal constitutional rights were violated by the Defendants' alleged indifference to his health and safety.

The Report and Recommendation of Magistrate Judge Baxter, filed on July 14, 2011 [49], is adopted as the opinion of this Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

cm: All parties of record

U.S. Magistrate Judge Susan Paradise Baxter